

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

OSCAR URIBE,

Petitioner,

vs.

NEVADA, STATE OF, *et al.*,

Respondents.

3:15-cv-00090-RCJ-WGC

ORDER

Petitioner has submitted an application to proceed *in forma pauperis* and a habeas petition.

The matter has not been properly commenced because the pauper application does not include all required attachments. Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR1-2, a petitioner must attach both an inmate account statement for the past six months and a properly executed financial certificate. Petitioner did not attach a financial certificate or an inmate account statement for the past six months. The application therefore is incomplete.

Further, the court notes that, under Rule 2(a) of the Rules Governing § 2254 cases, petitioner must name as a respondent the officer who has current custody of petitioner—usually the warden of the prison. Failure to name the custodian as respondent deprives the court of personal jurisdiction. *Johnson v. Reilly*, 349 F.3d 1149, 1153 (9th Cir. 2003).

The application for leave to proceed *in forma pauperis* therefore will be denied, and the present action will be dismissed without prejudice to the filing of a new petition in a new action with a pauper application on the proper form with all required attachments.

1 It does not appear from the papers presented that a dismissal without prejudice will materially
2 affect a later analysis of any timeliness issue with regard to a *promptly* filed new action.¹

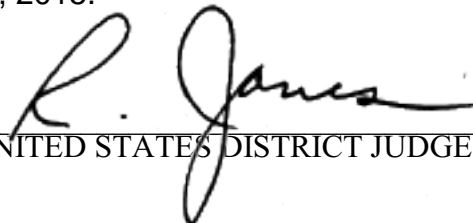
3 **IT THEREFORE IS ORDERED** that the application to proceed *in forma pauperis* (ECF #1)
4 is **DENIED** and that this action shall be **DISMISSED without prejudice** to the filing of a new petition
5 in a new action with a properly completed pauper application.

6 **IT FURTHER IS ORDERED** that a certificate of appealability is **DENIED**, as jurists of
7 reason would not find the court's dismissal of this improperly commenced action without prejudice to
8 be debatable or incorrect.

9 **IT FURTHER IS ORDERED** that the Clerk **SHALL SEND** petitioner two copies each of an
10 application form to proceed *in forma pauperis* for incarcerated persons and a noncapital Section 2254
11 habeas petition form, one copy of the instructions for each form, and a copy of the papers that he
12 submitted in this action.

13 **IT FURTHER IS ORDERED** that the Clerk of Court shall **ENTER JUDGMENT** accordingly
14 and close this case.

15 Dated this 27th day of April, 2015.

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18 UNITED STATES DISTRICT JUDGE
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27 With regard to timeliness (and contrary to the dates petitioner includes in his petition), the online docket records of the state
28 courts indicate that the Nevada Supreme Court affirmed the denial of petitioner's state postconviction petition in Case No. 65534 on November 12, 2014, and remittitur issued on December 8, 2014. Petitioner at all times remains responsible for properly exhausting his claims, for calculating the running of the federal limitation period as applied to his case, and for properly commencing a timely-filed federal habeas action.